

professional license required to operate the business.

(13) Excessive withdrawals, including transfers of funds or other business assets, from the concern for the personal benefit of any of its owners or any person or entity affiliated with the owners that hinder the development of the concern (see § 124.112(d)).

(14) Unauthorized use of SBA direct or guaranteed loan proceeds or violation of an SBA loan agreement.

(15) Submission by or on behalf of a Participant of false information to SBA, including false certification of compliance with non-8(a) business activity targets under § 124.507 or failure to report changes that adversely affect the program eligibility of an applicant or program participant under § 124.204 and § 124.112, where responsible officials of the 8(a) BD Participant knew or should have known the submission to be false.

(16) Debarment, suspension, voluntary exclusion, or ineligibility of the concern or its principals pursuant to part 145 of this title or FAR subpart 9.4 (48 CFR part 9, subpart 9.4).

(17) Conduct by the concern, or any of its principals, indicating a lack of business integrity. Such conduct may be demonstrated by information related to a criminal indictment or guilty plea, a criminal conviction, or a judgment or settlement in a civil case.

(18) Willful failure by the Participant business concern to comply with applicable labor standards and obligations.

(19) Material breach of any terms and conditions of the 8(a) BD Program Participation Agreement.

(20) Willful violation by a concern, or any of its principals, of any SBA regulation pertaining to material issues.

(b) The examples of good cause listed in paragraph (a) of this section are intended to be illustrative only. Other grounds for terminating a Participant from the 8(a) BD program for cause may exist and may be used by SBA.

§ 124.304 What are the procedures for early graduation and termination?

(a) *General.* The same procedures apply to both early graduation and termination of Participants from the 8(a) BD program.

(b) *Letter of Intent to Terminate or Graduate Early.* When SBA believes that a Participant should be terminated or graduated prior to the expiration of its program term, SBA will notify the concern in writing. The Letter of Intent to Terminate or Graduate Early will set forth the specific facts and reasons for SBA's findings, and will notify the concern that it has 30 days from the date it receives the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify termination or early graduation.

(c) *Recommendation and decision.* Following the 30-day response period, the Assistant Administrator for DPCE (AA/DPCE) or designee will consider the proposed early graduation or termination and any information submitted in response by the concern. Upon determining that early graduation or termination is not warranted, the AA/DPCE or designee will notify the Participant in writing. If early graduation or termination appears warranted, the AA/DPCE will make such a recommendation to the AA/8(a)BD, who will then make a decision whether to early graduate or terminate the concern. SBA will act in a timely manner in processing early graduation and termination actions.

(d) *Notice requirements.* Upon deciding that early graduation or termination is warranted, the AA/8(a)BD will issue a Notice of Early Graduation or Termination. The Notice will set forth the specific facts and reasons for the decision, and will advise the concern that it may appeal the decision in accordance with the provisions of part 134 of this title.

(e) *Appeal to OHA.* Procedures governing appeals of early graduation or termination to SBA's OHA are set forth in part 134. If a Participant does not appeal a Notification of Early Graduation or Termination within 45 days after the Participant receives the Notification, the decision of the AA/8(a)BD is the final agency decision effective on the date the appeal right expired.

(f) *Effect of early graduation or termination.* After the effective date of early graduation or termination, a Participant is no longer eligible to receive any

8(a) BD program assistance. However, such concern is obligated to complete previously awarded 8(a) contracts, including any priced options which may be exercised.

[63 FR 35739, June 30, 1998, as amended at 67 FR 47246, July 18, 2002]

§ 124.305 What is suspension and how is a Participant suspended from the 8(a) BD program?

(a) At any time after SBA issues a Letter of Intent to Terminate pursuant to § 124.304, the AA/8(a)BD may suspend 8(a) contract support and all other forms of 8(a) BD program assistance to that concern until the issue of the concern's termination from the program is finally decided. The AA/8(a)BD may suspend a Participant when he or she determines that suspension is needed to protect the interests of the Federal Government, such as where information showing a clear lack of program eligibility or conduct indicating a lack of business integrity exists, including where the concern or one of its principals submitted false statements to the Federal Government. SBA will suspend a Participant where SBA determines that the Participant submitted false information in its 8(a) BD application.

(b) SBA will issue a Notice of Suspension to the Participant's last known address by certified mail, return receipt requested. Suspension is effective as of the date of the issuance of the Notice. The Notice will provide the following information:

- (1) The basis for the suspension;
- (2) A statement that the suspension will continue pending the completion of further investigation, a final program termination determination, or some other specified period of time;
- (3) A statement that awards of competitive and non-competitive 8(a) contracts, including those which have been "self-marketed" by a Participant, will not be made during the pendency of the suspension unless it is determined by the head of the relevant procuring agency or an authorized representative to be in the best interest of the Government to do so, and SBA adopts that determination;

(4) A statement that the concern is obligated to complete previously awarded section 8(a) contracts;

(5) A statement that the suspension is effective nationally throughout SBA;

(6) A statement that a request for a hearing on the suspension will be considered by an Administrative Law Judge at OHA, and granted or denied as a matter of discretion.

(7) A statement that the firm's participation in the program is suspended effective on the date the Notice is served, and that the program term will resume only if the suspension is lifted or the firm is not terminated.

(c) The Participant may appeal a Notice of Suspension by filing a petition in accordance with part 134 of this chapter with OHA within 45 days after the concern receives the Notice of Suspension pursuant to paragraph (b) of this section. It is contemplated that in most cases a hearing on the issue of the suspension will be afforded if the Participant requests one, but authority to grant a hearing is within the discretion of the Administrative Law Judge in OHA. A suspension remains in effect pending the result of its appeal.

(d) SBA has the burden of showing that adequate evidence exists that protection of the Federal Government's interest requires suspension before OHA or the AA/8(a)BD makes a final determination regarding the termination action.

(1) The term "adequate evidence" means information contained in the record before the AA/8(a)BD at the time of his or her suspension decision that is sufficient to support the reasonable belief that the Government's interests need to be protected.

(2) SBA need not demonstrate that an act or omission actually occurred in order for OHA to uphold a suspension. SBA's burden in a suspension proceeding is limited to demonstrating that it had a reasonable belief that a particular act or omission occurred, and that that act or omission requires suspension to protect the interests of the Government.

(3) Unless the Administrative Law Judge consolidates the suspension and termination proceedings, OHA's review is limited to determining whether the